

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH KONGWA,

Plaintiff,

v.

No. 1:20-cv-01152-KK

ENTERPRISE SOLUTIONS, INC., and  
SARAH FAULKNER,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**GRANTING MOTION TO PROCEED IN FORMA PAUPERIS AND**  
**FOR SERVICE OF NOTICE AND WAIVER**

**THIS MATTER** comes before the Court on Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs, Doc. 2, filed November 5, 2020.

**Application to Proceed In Forma Pauperis**

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

*Menefee v. Werholtz*, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). “[A]n application to proceed in forma pauperis should be evaluated in light of the applicant's present financial status.” *Scherer v. Kansas*, 263 Fed.Appx. 667, 669 (10th Cir. 2008) (citing *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir.1988)). “The statute [allowing a litigant

to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs....” See *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

Plaintiff signed an affidavit declaring that he is unable to pay the costs of these proceedings and stated: (i) Plaintiff has been unemployed since March 23, 2020; (ii) his expected income next month is \$0.00; (iii) his average monthly expenses total \$1,055.00; and (iv) Plaintiff has \$1,200.00 in cash and \$1,200.00 in a bank account. The Court grants Plaintiff’s Application because he signed an affidavit declaring that he is unable to pay the costs of these proceedings and because his monthly income is \$0.00.

#### **Service on Defendants**

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915 which provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). The Court will not order service at this time because Plaintiff has not provided the Defendants' addresses. The Court will order service if Plaintiff files a motion for service which includes the address of each Defendant.

**IT IS ORDERED** that Plaintiff’s Application to Proceed in District Court without Prepaying Fees or Costs, Doc. 2, filed November 5, 2020, is **GRANTED**.

  
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**KIRTAN KHALSA**  
**UNITED STATES MAGISTRATE JUDGE**